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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Number 213

■

GEORGE PASCONE,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

■

Petition for Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts

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INDEX

Subject Index

PAGE

Summary Statement of Matters Involved 1

Reasons Relied on for Allowance of Writ 11

Brief in support of Petition for Writ 15

Opinion of the Court Below 15

Jurisdiction 15

Statement of the Case 16

Specification of Errors 17

Preliminary Argument 17

Argument

The statute in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of his right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution 18

Conclusion 26

INDEX

Cases Cited

PAGE

California v. Northum et al.
103 Cal. Supp. 295 18
Cantwell v. Connecticut
310 U. S. 296 ..... 12, 17, 19, 22, 25
Cincinnati v. Mosier
61 Ohio App. 81 ..... 18, 22
Commonwealth (Mass.) v. Anderson
32 N. E. (2d) 684 18
Concordia Fire Ins. Co. v. Illinois
292 U. S. 535, 545 20
De Jonge v. Oregon
299 U. S. 353, 364 25
Gaffney (City of) v. Putnam
... S. E. (2d) ... (South Carolina
Supreme Court, decided June 2, 1941) 18
Grosjean v. American Press Co.
297 U. S. 233 25
Hague v. C. I. O. et al.
307 U. S. 496 25
Lovell v. City of Griffin
303 U. S. 444 ..... 12, 17
Near v. Minnesota
283 U. S. 697, 707 25
People v. Kieran et al.
26 N. Y. S. (2d) 291 17
Reynolds v. United States
98 U. S. 145, 162 21
Schneider v. State
308 U. S. 147 ..... 12, 13, 17, 19, 22, 25
Semansky v. Stark, Sheriff (La.)
199 So. 129 ..... 18, 22
South Holland (Ill.) v. Stein
26 N. E. (2d) 868 ..... 18, 22

INDEX

Cases Cited

PAGE

Stromberg v. California
299 U. S. 233 25
Thomas v. Atlanta (Ga.)
1 S. E. (2d) 598 ..... 18, 21
Thornhill v. Alabama
310 U. S. 88, 95 25
Tucker v. Randall, etc. (N. J.)
15 A (2d) 325 18
United States v. Macintosh
283 U. S. 605, 634 21

Statutes Cited

Massachusetts General Laws, Acts of 1907,
ch. 584, as amended by Acts of 1909, ch. 329 .. 5, 15, 23-24
United States Code Ann., 28, sec. 344 (b)
[Judicial Code, sec. 237 (b)] 15
United States Constitution
Amendment XIV 10, 11, 12, 16, 17, 23
Virginia Statute for Religious Freedom 21

Miscellaneous Citations

BIBLE
Psalm 36:9 22
Isaiah 6:11 20
Isaiah 61:1, 2 20
Ezekiel 33:8, 9 23
John 17:3 22
Acts 3:22, 23 23
Acts 5:17-42 23
Blackstone, *Commentaries*
Chase 3d ed., pp. 5-7 22
Cooley, *Constitutional Limitations*
8th ed., p. 968 22

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Petition for Writ of Certiorari to the Supreme Judicial Court of the Commonwealth of Massachusetts

To the SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petition of George Pascone shows to the Supreme Court of the United States as follows:

A
Summary Statement of Matters Involved

1. *Statement of Facts.*

The petitioner is one of Jehovah's witnesses and according to the undisputed evidence is an ordained minister of Jehovah God. That on May 18, 1940, near the corner of

Washington Street and Court Street in the City of Boston, he stood on foot near the curb of the sidewalk with a canvas bag or sack, containing literature, slung over his shoulder, and was there engaged in the distribution of the magazines entitled "The Watchtower" and "Consolation" and the booklet "Refugees", copies of which were introduced in evidence.

The contents of this literature related exclusively to explanation of how prophecies of Holy Writ recorded centuries ago are now being fulfilled; of how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty" at Armageddon; which destruction shall be immediately followed by continuing growth and expansion of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, life, prosperity and happiness to all survivors and eventually also to many who have died in centuries past and who shall be resurrected to live upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such literature's contents clearly set forth the true distinction between all religion and the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of the true worship of Almighty God. (See Exhibits and inside front cover of "The Watchtower".)

Pascone's method of distribution was to hold the literature in his hand so as to make same visible to the passers-by. To assist him in the distribution of these pub-

lications he also held placards, on one side of which was printed the slogan:

"Consolation Dares to Print the Truth Exposing Hypocritical Rackets. 5c per copy"

and on the other side the following slogan:

"Exposing Un-American Activities"

He alternately turned the sign so as to make both slogans visible to passers-by.

The petitioner would ask each prospect who stopped to contribute five cents for the publications, and if the person taking the publication was unable or unwilling to pay five cents, the publication was given free upon the promise that the person receiving it would read it. The petitioner testified that no profit is made by the distribution of this literature and that he distributed the literature for the sole purpose of "preaching" or promulgating the beliefs of Jehovah's witnesses as to the contents of the Bible and that the literature was the revealed word of God. (R. 1-3)

Petitioner admitted having received five cents from a passer-by in exchange for the magazine "Consolation". The arresting officer Gallagher testified that he asked the petitioner if he had a permit and received the reply, "No, I do not need one." (R. 1)

The petitioner was thereupon arrested and charged by complaint Number 265 with violating Acts of 1907, Chapter 584, and Acts of 1909, Chapter 329, of the General Laws of the Commonwealth of Massachusetts regulating the use of streets of the City of Boston by requiring permits for peddlers or persons selling articles of merchandise upon the streets of that city, which said law is here drawn in question. The petitioner was also charged by another complaint, Number 264, with violating Chapter 39,

Section 37, Ordinance of the City of Boston prohibiting the use of signs on the streets.

Upon a trial June 4, 1940, in the Boston Municipal Court the petitioner duly filed and presented his motion to dismiss, which was overruled by the court, and he was convicted of both charges and fined on June 4, 1940. (R. 4-11)

In due time, manner and form, the petitioner appealed from said convictions separately to the Superior Court of Suffolk County. (R. 10)

Petitioner in Superior Court waived a jury and on October 11, 1940, the separate complaints were tried de novo and together, before Justice Williams, with consent of the parties. (R. 7, 11) Thereupon the cases were taken under advisement by Justice Williams, and on October 24, 1940, he rendered a judgment overruling the petitioner's motion to dismiss and finding the petitioner guilty. (R. 7, 11) On October 26, 1940, in each of the cases the petitioner filed separate bill of exceptions; but thereafter on November 7, 1940, on motion duly made he was allowed to file a consolidated bill of exceptions. (R. 4, 8, 11)

By motion said consolidated bill of exceptions duly filed and case ordered on November 7, 1940, transferred to the Supreme Judicial Court for determination of the questions. (R. 8, 11)

Said appeal came on for argument before the Supreme Judicial Court and on April 5, 1941, that court wrote an opinion (R. 12-17) and rendered a judgment reversing the conviction under the complaint charging a violation of the ordinance prohibiting use of signs on the streets without a permit and holding said ordinance unconstitutional. In the same opinion the court, however, held that the statute prohibiting the use of the streets for the sale of merchandise without a permit as applied to the facts was valid and not unconstitutional and did not deprive petitioner of his rights of freedom of speech, press and worship of Almighty God contrary to the Fourteenth

Amendment to the United States Constitution. (R. 14-17) The court thereupon rendered judgment on April 5, 1941, affirming the conviction under complaint Number 265.

2. *Statute here drawn in question.*

Acts of 1907, Chapter 584, as amended by Acts of 1909, Chapter 329, reads as follows:

"AN ACT RELATIVE TO THE USE OF PUBLIC STREETS IN THE CITY OF BOSTON FOR THE STORAGE AND SALE OF MERCHANDISE:

"Be it enacted, etc., as follows:

"SECTION 1. The board of street commissioners of the city of Boston may issue, under the conditions hereinafter provided and under rules of its own not inconsistent herewith, licenses for the use of specified parts of public streets in said city for the storage and sale of merchandise.

"SECTION 2. A person seeking such a license shall file with said board a written application therefor, stating his name, age, occupation, residence and place of business, if any, and whether or not he is a citizen of the United States or has declared his intention to become such. He shall describe accurately in writing, by plan or otherwise, the location, the shape and the dimensions of the space which he desires to occupy, the movable structures which he proposes to use, and the kinds of merchandise which he wishes to store and to sell. He shall submit as part of his application the written consent to the issuance of the said license on the part of the owner or owners of the premises in front of which he desires to carry on business and of the tenants, of the ground floor of such

premises, or in lieu thereof the written consent of the duly authorized agent or agents of such owners and tenants. When the privilege for which a license is asked is to be exercised in front of premises owned by the City of Boston, the owner's consent herein provided for may be given by the department having charge of said premises. An application from a firm or a corporation shall be made by such partners or officers and under such further conditions as the board shall determine, and every partner or officer so designated shall give concerning himself the information as to age, occupation, citizenship, residence and place of business which is required of an individual applicant.

"SECTION 3. The application shall be sent by the board of street commissioners to the police commissioner of the city of Boston, with a request for a report thereon. It shall be the duty of said police commissioner forthwith to examine in person or by means of his subordinates the location for which the license is asked, with particular reference to the effect of its use as desired upon the free passage of vehicles and of foot passengers and upon the maintenance of public order. In his report to the board of street commissioners, which shall be made as soon as practicable, he may certify his approval or his disapproval, or his approval conditional upon amendments to be made in the application as affecting the precise location, its area or the kinds of merchandise to be stored and sold thereon.

"SECTION 4. Should the board of street commissioners and the police commissioner agree as to the propriety of issuing a license, the authority for further action shall be vested in said board; but no license shall become effective until twenty-four hours

after a copy thereof has been delivered to the police commissioner.

"SECTION 5. A license issued by the board of street commissioners may be for one or more week days in each week, for such hours daily as it shall in each case determine, and for any period not exceeding twelve months. It may be renewed on an application conforming to the conditions and in accordance with the procedure prescribed in sections two, three and four of this act. It may be suspended or revoked for any reason which said board shall consider sufficient.

"SECTION 6. For each license issued and for each renewal thereof the board of street commissioners shall charge and collect in advance a fee of not less than five dollars nor more than one hundred dollars, according to its estimate of the value of the privilege granted, the receipt of which fee shall be certified on the face of the license. It may make and collect an additional charge as rent whenever the licensee is not the principal tenant of the ground floor of the premises in front of which the location is granted; or whenever such tenant is the licensee but carries on in the location for which the license is issued a business which in the manner of its conduct or in the character of the merchandise which is sold differs materially from the business in which he is mainly engaged at that place.

"SECTION 7. The board of street commissioners shall cause to be kept at its office full and accurate records of its doings under this act, open to the public under reasonable restrictions, and at all times to the mayor of the city or to such persons as he may designate. Separate accounts shall be kept of moneys

received from licenses and from rentals derived from the use of parts of the public streets. Employees of the board entrusted with the receipt or the custody of such moneys shall be required to give bonds for the faithful performance of their duties to such amount in each case and of such character as the board shall determine. Moneys received under the provisions of this act shall be paid over to the city collector weekly, or more frequently, with a statement in detail of the sources from which they were derived; and the collector shall give his receipt therefor. The board shall include in its annual report a reasonable summary of its doings under the authority of this act.

"SECTION 8. Requirements and prohibitions contained in this act or elsewhere to the contrary notwithstanding, it shall be lawful to occupy without license or fee places in the streets, not including sidewalks, within the limits of Faneuil Hall Market, as the same are or may be defined in the ordinances of the city of Boston, and other market limits added under authority of chapter three hundred and seventy-six of the acts of the year eighteen hundred and ninety-six, for the sale from wagons or other vehicles of fresh provisions and perishable produce; *provided,* that the same are the product of the farm of the person offering them for sale, or of a farm within ten miles of the residence of such person; or are to be sold at wholesale only by the party offering them for sale on commission, for, or as agent for, some person or persons not residing or having a usual place of business within eight miles of said market; or are meats to be sold at wholesale only by the person who slaughtered the animals of which the same were a part. Such sales shall be lawful only on days on which Faneuil Hall Market is open. Nothing contained in this section shall be construed to repeal or prevent reasonable rules of

police, needful for the decorum, convenience and good order of the market, and of those who buy and sell therein.

"SECTION 9. The police commissioner of the city of Boston may designate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified by him, and under such general rules as he shall make, for any hawker or pedler, without the license provided for in this act, to stop or stand for the purpose of selling merchandise: *provided,* that such hawkers or pedlers carry on their business in conformity with the laws of the Commonwealth, the ordinances of the city, and the regulations of the board of aldermen and of the board of health of the city of Boston, now, or hereafter enacted and not inconsistent herewith.

"SECTION 10. A person who uses or occupies a part of a public street in the city of Boston, otherwise than according to the provisions of this act, for the purchase, sale, storage or display of merchandise or other articles except materials or appliances used or to be used for public purposes or for building operations under authority or license lawfully conferred or issued by or under an ordinance of the city of Boston, now in existence or hereafter enacted, shall be subject to a fine not exceeding twenty dollars for the first offence and not exceeding one hundred dollars for each subsequent offence, and should such person be unknown to the public officer witnessing such use or occupation he may be arrested by the officer without a warrant.

"SECTION 11. Chapter 211 of the Act of the year 1859, Chapter 152 of the Act of the year 1860 and all other acts, ordinances and regulations are hereby repealed and annulled."

3. *Substantial Federal Questions Presented.*

By motion to dismiss duly filed in the Municipal Court, petitioner raised the Federal questions here presented, asserting the statute to be in violation of the Fourteenth Amendment to the United States Constitution in that the statute as construed and applied denied and deprived the petitioner of his right of freedom of speech, press and worship of Almighty God contrary to the aforesaid amendment to the Constitution. (R. 6, 8-10)

The said Municipal Court duly considered and passed upon such questions and specifically held that the statute was applicable and that petitioner was not denied his rights of freedom of speech, of press and of worship of Almighty God. (R. 9)

At the close of all the evidence on the trial de novo in the Superior Court before Justice Harold P. Williams on October 11, 1940, the petitioner duly filed in writing his motion to dismiss the complaints on the grounds that the ordinances and statutes in question under which the said complaints had been brought had no application to the sale, distribution, or display of religious literature and material, and that so far as said ordinances and statutes purport to include the sale, distribution or display of religious literature and material they are invalid, void and unconstitutional in that they deprive the petitioner of rights of speech, press and worship guaranteed under the Fourteenth Amendment to the United States Constitution. (R. 3, 4) The court denied the motion to dismiss and held that the ordinances and statutes were valid and that as construed and applied did not deny the petitioner his aforesaid rights under the Fourteenth Amendment to the United States Constitution. (R. 3)

These questions were each preserved by said consolidated bill of exceptions and thereafter duly presented to the Supreme Judicial Court for determination, which said Supreme Judicial Court specifically overruled each of such contentions urged by petitioner and specifically held that the statute was applicable and that petitioner was not denied his rights of freedom of speech, of press and of worship of Almighty God. (R. 12-17 [Opinion])

Therefore there are presented for review substantial Federal questions to this court as follows:

Is the statute in question as construed and applied by the court below violative of the Fourteenth Amendment to the United States Constitution in that it abridges and denies petitioner's rights of freedom of speech, of press and of worship of Almighty God secured and included within the "due process" clause of the Fourteenth Amendment?

B

Reasons Relied on for Allowance of Writ

The questions presented are of national importance and seriously affect the fundamental personal and civil rights of every person within the United States. The Massachusetts Supreme Judicial Court has rendered a decision on an important Federal question in a way which is in conflict with applicable decisions of this Court and has radically and so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision to halt the same.

The effect of the decision of the court below is to *amend* the Constitution of the United States in a manner contrary to the law and reasoning expressed in the opinions of this Court.

The holding of the Supreme Judicial Court to the effect that the preaching of the gospel of God's Kingdom through

distribution of printed literature for which *contributions were received* when done on the *streets* of Boston does not come within the Constitutional guarantees has the effect of removing Constitutional protection from persons in Boston. Such is a new theory which is entirely foreign to American life, which should be removed and eradicated by this Court before it reaches more devastating consequences. The court below held that the guarantee of freedom of the press does not extend to "sale" of printed information and opinion, i.e., that if money was accepted for the literature distributed such transaction took the matter beyond the reach of the Fourteenth Amendment to the United States Constitution. This identical contention was made by the Supreme Court of Errors of the State of Connecticut in the *Cantwell* case, 310 U. S. 296, which was expressly rejected as "foreign" by this Court.

Petitioner was engaged in the circulation of printed matter containing information about the Kingdom of Almighty God which is shortly to be established on the earth and also containing Bible explanations of present conditions of distress and perplexity prevalent in the earth. There is no distinction or difference between this case and the cases of *Schneider* v. *Town of Irvington,* 308 U. S. 147, *Lovell* v. *Griffin,* 303 U. S. 444, and *Cantwell* v. *Connecticut,* supra, all of which announce the Constitutional guarantee as to the activity of Jehovah's witnesses.

Another reason relied upon for the allowance of the writ is the fact that the petitioner is an ordained minister of the Gospel of the Kingdom of Almighty God and as such minister he does not come within the provisions of the statute because he preached by publicly distributing literature on the streets concerning these matters and from some who took literature he received contributions to aid in printing and distributing more like literature.

The activity of preaching the Gospel in this manner cannot be regulated by permit from the municipality or state even when carried on upon the streets; because the

streets have been held, from time immemorial, as the natural and proper place for the dissemination of information and opinion on such matters as this. (*Schneider* v. *Irvington,* supra) And furthermore, to permit regulation of such activity is in effect to establish a state religion.

Wherefore your petitioner prays that this Court issue a writ of certiorari to the Supreme Judicial Court for the Commonwealth of Massachusetts, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the decree of the court be reversed and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

GEORGE PASCONE,

Petitioner

By

JOSEPH F. RUTHERFORD
HAYDEN COVINGTON

Attorneys for Petitioner

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinion of the Court Below

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts is not yet officially reported, but appears in Vol. ... of the Atlantic Reports (Second Series) at page ... and also appears in the Record at pages 12 to 17.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 USCA 344 (b)].

The judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts was rendered and entered of record on the 5th day of April, 1941. (R. 8, 12)

The petition for writ of certiorari is filed herein before the expiration of three months from the date the decree and judgment of said Supreme Judicial Court was rendered and entered, which is within the time allowed by law.

2. *The Statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decisions of each of the courts below were wrongfully in favor of its validity. The legislation challenged here is a statute of the General Laws of the Commonwealth of Massachusetts (Acts of 1907, Chapter 584, as amended by Acts of 1909, Chapter 329) known as "An Act Relative

to the Use of Public Streets in the City of Boston for the Storage and Sale of Merchandise".

The entire statute appears herein at pages 5 to 10, inclusive, supra, and is described and referred to in the Record at pages 12 to 17 (opinion of the Supreme Judicial Court).

In holding that the statute is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the Supreme Judicial Court of the Commonwealth of Massachusetts held that the statute properly applied to the activity of petitioner and decided in favor of its validity on its face and as so applied. (R. 12-17)

Petitioner duly and properly alleged in all the courts below that said statute on its face and as applied was invalid because it deprived him of his rights secured by the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention to the Fourteenth Amendment was thus drawn in question. The judgments of the trial courts were in favor of the validity of such statute; also the judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts was wrongfully in favor of its validity.

C

Statement of the Case

A full statement of the case has been given herein (supra, pages 1 to 11) and, for the sake of brevity, will not be repeated, but is here referred to.

D

Specification of Errors

Petitioner assigns the following errors in the record and proceedings of said case:

The Supreme Judicial Court of the Commonwealth of Massachusetts committed fundamental error in affirming the judgment of the Superior Court and in holding that the petitioner was guilty of a violation of said statute of the Commonwealth because the statute is invalid, as construed and applied by the courts below, in that it deprives petitioner of his right of freedom of press, speech, conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

And for these reasons it is reversible error for the Supreme Judicial Court of the Commonwealth of Massachusetts to refuse to set aside the judgment of conviction rendered by the Superior Court and in holding that the statute was valid and constitutional.

The Supreme Judicial Court errs in holding that the statute as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this Court in *Cantwell* v. *Connecticut,* supra, *Schneider* v. *Irvington,* supra, and *Lovell* v. *Griffin,* supra, the decision is also in conflict directly with the following opinions and decisions declaring such laws invalid as applied to the above described activity of Jehovah's witnesses in preaching the Gospel of God's Kingdom, that is to say, the cases of *People* v. *Kieran et al.,* 26 N. Y. S.

(2) 291, *Tucker* v. *Randall* (N. J.), 15 A. (2) 325, *Commonwealth* v. *Anderson* (Mass.), 32 N. E. (2) 684, *City of Gaffney* v. *Putnam* (South Carolina Supreme Court opinion rendered June 2, 1941, unreported at time of this writing), *Semansky* v. *Stark, Sheriff,* 199 So. 129 (La.), *Thomas* v. *Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 598, *Cincinnati* v. *Mosier,* 61 Ohio App. 81, *California* v. *Northum et al.,* 103 Cal. Supp. 295, 41 C. A. 2d 284, *Village of South Holland* v. *Stein,* 26 N. E. (2) 868 (Ill.). Each of the above cases involve Jehovah's witnesses shown to have been receiving contributions for the literature and working in the same way as petitioner was doing it; and the ordinances and laws there held to be unconstitutional are very similar to the statute here drawn in question.

ARGUMENT

The statute in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioner of his right of freedom of press, of speech, of conscience and of his right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is,

therefore, *foolish.* Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as the petitioner here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioner. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this Court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for books and was prosecuted under the ordinance "because she canvassed without a permit".

The undisputed evidence shows that the right which petitioner exercises is that of worshiping Almighty God by acting as an *ordained minister* in preaching the Gospel,

and also press activity, and the action of the Boston authorities in arresting and prosecuting him is in excess of their lawful authority; and it is the unconstitutional application of said statute to petitioner's activities that invalidates it.

It will be recalled that in the case of *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

The petitioner is an *ordained minister* of the Gospel of God's Kingdom or Theocracy, which is a righteous government that will be fully established in the earth very shortly. He possesses credentials showing his ordination. He has entered into a covenant or agreement with Almighty God as provided in Isaiah 61:1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government, which will bring peace, prosperity and happiness to all who survive the battle of Armageddon — near at hand — Jehovah's witnesses preach the Gospel publicly throughout the land. To enable the petitioner to effectively thus preach the Gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioner uses books, booklets, magazines and pamphlets which contain the entire message. This literature he employs as a substitute for talking, or sermons, and which is more effective because it can be studied by the recip-

ients in the quiet of the home. Thus much time is saved and more people are reached.

In thus acting, the petitioner is a duly ordained minister of the Gospel of Jehovah God's Kingdom. It cannot properly be said that such conduct does not constitute a proper worship or service of Almighty God. This showing is conclusive upon all concerned in the matter. Furthermore, this Court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed. *Reynolds* v. *United States,* 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh,* 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, and imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioner is an *ordained minister,* what is next presented?

Attention of this Court is kindly drawn to the case of *Thomas* v. *City of Atlanta,* supra, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is

> not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and to teach his religion."

To the same effect is *Village of South Holland* v. *Stein,* supra, *Semansky* v. *Stark,* supra, *Cincinnati* v. *Mosier,* supra, *Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra.

The Commonwealth of Massachusetts has no more authority to require petitioner, one of Jehovah's witnesses, to register with the Commissioners than it would to require the religious priests, religious clergy and religious rabbis of Boston to register as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such statute cannot be applied so as to interfere with or deprive petitioner of his right of worship. This is the petitioner's way of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by the petitioner in this case is commanded by the written law of Almighty God. God's law is supreme. This rule is recognized by Blackstone in his *Commentaries* (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations,* 8th ed., p. 968. Petitioner greatly desires to have life and to live, and therefore he must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioner stands in the same position as the apostles of Jesus Christ who, when haled before magistrates and requested to discontinue their preaching the Gospel from house to house, as they did at the time of their arrest, and when

ordered to desist, told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter, as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ." —Acts 5:42.

Should the petitioner cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, he would violate the agreement previously made by him to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and petitioner would thereby subject himself to everlasting destruction, as he verily believes. See Ezekiel 33:8, 9; Acts 3:22, 23.

The petitioner refused to apply for a permit or license because he is an *ordained minister* of Almighty God, preaching the Gospel, and did not come within the provisions of the statute, and furthermore he chose to follow in the footsteps of the Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit or license to do that which God has *commanded* to be done at the pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Tested in the light of the standards contained in the cases cited above, it becomes obvious that the statute (Acts of 1907, Chapter 584, as amended) under which the petitioner was convicted, cannot stand the test of the Fourteenth Amendment to the Constitution because on its face and as applied in this case there is a clear infringement by "prior censorship" of the press.

(1) Section 1 of the statute is unconstitutional since

the issuance of the license by the street commissioners is *permissive* and not *mandatory*. Further, it permits a limitation of the situs in which distribution may be carried on.

(2) Section 2 is unconstitutional for the reason that it requires one who wishes to distribute publications or leaflets to obtain the *permission and written consent* not only of the owner, but of the ground floor tenant in front of whose premises such distribution is to be made. By this provision not only is the board of street commissioners able to censor previously the distribution, but every ground floor tenant, and every owner of real estate, can exert a censorship that would literally prevent the distribution and circulation of views different from his own.

(3) Section 3 is unconstitutional in that it makes the issuance of the permit dependent on the approval or disapproval of still another potential censor, the police commissioner.

(4) Section 4 is unconstitutional because it requires the concurrence in opinion of the street commissioners and the police commissioner. In controversial matters of the public opinion, it is entirely possible that such concurrence cannot be obtained. To condition the right to freedom of the press upon the agreement of two censors is an unwarranted burden upon that right.

(5) Section 5 is unconstitutional in that it provides that the license "may be suspended or revoked for any reason which said board shall consider sufficient".

(6) Section 6 makes it possible for the Board of Street Commissioners to charge a fee of not more than One Hundred Dollars ($100.00) for such license, as well as a charge for rent in some instances. The right to freedom of the press is not within the intendment of our Constitution a right to be bought or sold.

(7) Section 9 permits the police commissioner to "des-

ignate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified by him and under such general rules as he shall make . . . without the license provided for in this act to stop or stand for the purpose of selling. . . . "

This section, although it permits the sale or distribution without a license, permits it subject to such restrictions as to time, place and manner as to render it unconstitutional under the cases cited.

Furthermore, it is clear that the activity of the petitioner was activity of the press and was and is such press activity protected by the Constitution. The streets are the natural and proper places for the dissemination of such information (*Schneider* v. *Irvington,* supra) and this right cannot be denied or abridged on the theory that it can be better exercised elsewhere. The conveniences of the City of Boston to keep desired conditions on the streets do not warrant licensing or abridgment. (*Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra, *Hague* v. *C. I. O.,* 307 U. S. 496) The duty of the officials to maintain order does not warrant the prior censorship of the press which is permitted by the application of the statute to the facts in this case. *Hague* v. *C. I. O.,* supra, *Thornhill* v. *Alabama,* 310 U. S. 88, 95, *Grosjean* v. *American Press Company,* 297 U. S. 233, *De Jonge* v. *Oregon,* 299 U. S. 353, 364, *Stromberg* v. *California,* 299 U. S. 233, *Near* v. *Minnesota,* 283 U. S. 697, 707.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the Supreme Judicial Court of the Commonwealth of Massachusetts.

Confidently submitted,

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(14)

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Supreme Court of the United States.

OCTOBER TERM, 1941.

No. 213.

GEORGE PASCONE, PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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INDEX.

	Page
Statement of the Case	1
The Issue	3
Summary of Argument	4
Argument	6
I. The enactment of chapter 584 of the 1907 Acts and Resolves of Massachusetts, regulating the sale of merchandise on the streets of the City of Boston, was a proper exercise of the police power of the Commonwealth	6
II. The application of the statute to this petitioner is not rendered unconstitutional merely because the commodity which he was selling on the streets of Boston was a pamphlet advocating certain religious doctrines or theories	10
Conclusion	12
Appendix	13

CITATIONS.

Cases:

Cantwell v. Connecticut, 310 U.S. 296	10, 11, 12
Commonwealth v. Ellis, 158 Mass. 555	7, 9
Commonwealth v. Fox, 218 Mass. 498	7, 9
Commonwealth v. Pascone (Mass.), April 5, 1941 (Mass. Advance Sheets (1941) 713; 33 N.E. (2d) 522)	7, 9
Cox v. New Hampshire, March 31, 1941 (61 Sup. Ct. Rep. 762)	6, 7, 8, 10
Hague v. Committee for Industrial Organization, 307 U.S. 496	6, 8
Lovell v. Griffin, 303 U.S. 444	11

Page

Manchester v. Leiby, 117 F. (2d) 661; cert. denied, April 7, 1941 (61 Sup. Ct. Rep. 838) 7, 10
Minersville School District v. Gobitis, 310 U.S. 586 10
Reynolds v. United States, 98 U.S. 145 10
Schneider v. State, 308 U.S. 147 6, 7, 11

Statutes:

Acts and Resolves of Massachusetts of 1907, chapter 584, as amended by Acts and Resolves of 1909, chapter 329 1, 5, 6

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

The petitioner was prosecuted and found guilty upon a complaint charging that he "did use and occupy a part of a certain public street" of the City of Boston "for the purchase, sale, storage and display, in said part of said street, of certain merchandise, to wit books and pamphlets," in violation of chapter 584 of the 1907 Acts and Resolves of Massachusetts, as amended (see statute set forth in Appendix, pages 13 to 17, *infra*).

In substance the statute makes it a punishable offense, with stated exceptions not applicable to the petitioner, for a person to use or occupy a public street in the City of Boston for the purchase, sale, storage or display of merchandise or other articles without a license obtained pursuant to other provisions of the said statute (§ 10). An

applicant for such a license is required to apply therefor to the Board of Street Commissioners, describing the location which he desires to occupy, the movable structures he proposes to use and the kinds of merchandise which he wishes to store and sell (§§ 1, 2). He must secure the written consent of the owner of the premises in front of which he desires to carry on business and of the tenants of the ground floor of such premises (§ 2). The application is then referred by the Board of Street Commissioners to the Police Commissioner, who is required to examine the location for which the license is sought "with particular reference to the effect of its use as desired upon the free passage of vehicles and of foot passengers and upon the maintenance of public order" (§ 3). The Police Commissioner may approve or disapprove the application, or may make his approval conditional upon amendments made in the application as affecting the location, the area, or the kinds of merchandise to be stored and sold thereon (§ 3). The license may be for a limited period of time or any period not exceeding twelve months, and it may be suspended or revoked for reasons which the Board of Street Commissioners shall deem sufficient (§ 5). A fee of not less than five dollars nor more than one hundred dollars is to be charged for each license, according to the Board of Street Commissioners' estimate of the value of the privilege granted. An additional charge may be made as rent whenever the licensee is not the principal tenant on the ground floor of the premises in which the location is granted (§ 6). The requirements and prohibitions of the statute are specifically made inapplicable to certain designated market districts, including the Faneuil Hall market (§ 8). The Police Commissioner is authorized to designate certain streets, parts of streets or sections of the city wherein it shall be lawful on the days and within the hours specified by the Commissioner, and under general rules made by him, for a hawker or peddler to stop or stand for

the purpose of selling merchandise without a license provided for in this statute (§ 9).

It appeared in evidence that the petitioner, without having applied for or obtained a license from the Board of Street Commissioners under the provisions of the aforementioned statute (R. p. 1), stood on the sidewalk near the corner of Washington Street and Court Street, Boston, Massachusetts, on May 18, 1940, at about 11.30 a.m., carrying a sack of literature in the form of pamphlets entitled "Consolation" (R. p. 2) slung over his shoulder (R. p. 1) and carrying a placard bearing the words "Consolation Dares to Print the Truth Exposing Hypocritical Rackets 5c per Copy" (R. p. 2); that in the presence of a police officer the petitioner sold one of the said pamphlets to a passerby for five cents (R. p. 1); and that, when questioned by the officer, the petitioner said that he did not have a license to sell the said pamphlets and that he did not need one (R. p. 1).

The petitioner testified that he is a member of Jehovah's Witnesses (R. p. 1); that he is an ordained minister of that religious group (R. p. 2); that he was ordained by God and that his occupation on this earth is that of hod carrier (R. p. 2).

The petitioner contended that he was distributing the said pamphlets for the purpose of promulgating the religious beliefs of Jehovah's Witnesses (R. p. 2).

The Issue.

The issue sought to be presented by the petitioner in this case is whether the Supreme Judicial Court of Massachusetts was in error in holding that the said statute was applicable to, and could properly be enforced against, the petitioner in connection with his offers to sell and sales of pamphlets on the streets of the City of Boston.

Summary of Argument.

The statute in question is designed to regulate the use of the streets of the City of Boston by persons who would use the streets for their own benefit in displaying and selling merchandise, whatever its character. The statute as construed by the Supreme Judicial Court of Massachusetts (R. p. 16; opinion rendered April 5, 1941, reported in Mass. Advance Sheets (1941) 713) does not in any way prevent or interfere with the free dissemination of information or distribution of pamphlets on the streets of Boston.

The regulations contemplated by the statute under consideration have two principal aspects. One involves the protection of the interests of the travelling public in their use of the streets and sidewalks. The other aspect involves the protection of owners and occupants of premises abutting on the streets of Boston from unfair competition or other unjustifiable interference with their use and enjoyment of their property, said unfair competition or interference arising out of the commercial use of the streets and sidewalks by persons not paying taxes on, or rent for, abutting property.

It is, of course, well settled that appropriate governmental agencies are under obligation to assure the safety and convenience of the people in the use of public highways by means of reasonable regulations. Such regulations may properly deal, as does the statute here under consideration, with the effect of a proposed commercial use "upon the free passage of vehicles and of foot passengers and upon the maintenance of public order" (§ 3). It is beyond dispute, also, that the police power furnishes ample basis for the reasonable regulation of commercial solicitation or canvassing, and commercial peddling or other selling of merchandise. Consequently, the validity of the statute here under consideration must be sustained if, as the respondent contends, it prescribes reasonable regulations governing sales of merchandise on the public highways.

The statute under consideration is of general application, applying to sales of all types of "merchandise." This term obviously includes pamphlets of the type displayed and sold by the petitioner. The fact that in this instance the pamphlets are alleged by the petitioner to deal with religious subjects and to be designed to promulgate certain religious theories or doctrines does not remove them from the permissible scope of operation of the general statute. Nor is the petitioner himself excluded from the operation of the law, even if it be a fact, as he claims in substance, that his religious beliefs require or authorize him to sell these pamphlets on the streets of Boston without applying for or obtaining a license. While the petitioner is entitled under the Constitution of the United States to absolute freedom with respect to his religious beliefs, his conduct remains subject to reasonable regulation for the protection of society.

The petitioner admittedly set himself up to sell pamphlets at a busy intersection of streets in the City of Boston. In these circumstances the requirement that he procure a license under the provisions of chapter 584 of the Acts and Resolves of Massachusetts of 1907, as amended, did not unreasonably interfere with the petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

Argument.

I. THE ENACTMENT OF CHAPTER 584 OF THE 1907 ACTS AND RESOLVES OF MASSACHUSETTS, REGULATING THE SALE OF MERCHANDISE ON THE STREETS OF THE CITY OF BOSTON, WAS A PROPER EXERCISE OF THE POLICE POWER OF THE COMMONWEALTH.

This Honorable Court has frequently recognized the duty of local governmental agencies to regulate the use of public highways.

> *Schneider* v. *State*, 308 U.S. 147, 160.
> *Cox* v. *New Hampshire*, March 31, 1941 (61 Sup. Ct. Rep. 762, 765).
> *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496, 516.

In the *Schneider* case this Court said:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets" (308 U.S. 147, 160).

It is to be noted at the outset that the Massachusetts statute does not prevent or interfere with the imparting of knowledge through speech or the free dissemination of literature upon the streets of the City of Boston. "It is not directed against the dissemination of information or the distribution of printed matter by persons simply going about from place to place in the streets. It is directed to

the regulation of persons who seek to establish themselves for business purposes in some one place in the street for an appreciable period of time, thus appropriating to their own use and profit a part of the space dedicated and prepared at public expense for purposes of public travel."

Commonwealth v. *Pascone* (Sup. Jud. Ct. of Mass., opinion rendered April 5, 1941, reported in 1941 Mass. Advance Sheets, 713, 717; 33 N.E. (2d) 522).

Cf. *Manchester* v. *Leiby*, 117 F. (2d) 661, 664; cert. den. April 7, 1941 (61 Sup. Ct. Rep. 838).

The validity of this statute, which regulates the acts of persons seeking to use the public highways for commercial purposes, is not to be determined by the standards applied in cases involving limitations upon the non-commercial dissemination of ideas or distribution of literature. The power of a State to regulate such commercial use of the streets is considerably broader than the power to regulate their use for non-commercial dissemination of information.

Schneider v. *State*, 308 U.S. 147, 165.

Where, as is the case in Boston, the streets are narrow and congested, it is particularly important that their use be made subject to reasonable regulation.

Cox v. *New Hampshire*, March 31, 1941 (61 Sup. Ct. Rep. 762).
Schneider v. *State*, 308 U.S. 147, 160.
Commonwealth v. *Ellis*, 158 Mass. 555, 556.
Commonwealth v. *Fox*, 218 Mass. 498, 500.

In the case of *Commonwealth* v. *Ellis*, *supra*, the Massachusetts court considered the validity of a municipal ordinance providing that no person should sell merchandise in

the streets of Boston without a permit from the superintendent of streets. The validity of the ordinance was upheld in an opinion by Mr. Justice Holmes, in which the following language appears:

> "Any one who has observed the obstruction to travel and the general inconvenience which are caused by a stationary object in our crowded and narrow streets, would be slow to declare unreasonable a prohibition intended to prevent that inconvenience. We are of opinion, both on principle and on authority, that for this purpose the city council lawfully may forbid public selling in the streets. . . . This being so, the ordinance is none the worse for the exception in case of a permit from the superintendent of streets" (158 Mass. 555, 556).

A citizen has no absolute right to use the public streets, even for the non-commercial dissemination of his views. His privileges and rights in this regard must be exercised in subordination to the general advantage, comfort and convenience of the community.

> *Hague* v. *Committee for Industrial Organization,* 307 U.S. 496, 516.
> *Cox* v. *New Hampshire,* Mareh 31, 1941 (61 Sup. Ct. Rep. 762, 765).

Speaking for a unanimous court, Chief Justice Hughes said, in the *Cox* case, *supra:*

> "The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order

upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection."

In so far as the Massachusetts Legislature sought to protect the rights of abutting property owners and occupants from unjustifiable interference by other persons seeking to appropriate adjoining portions of the streets or sidewalks to their own use and profit, the statutory provisions are clearly reasonable. Since the amounts of taxes payable by property owners and the rentals payable by their tenants are directly affected by the location of the property and by the nature and extent of traffic on the streets abutting it, one cannot fairly quarrel with a legislative purpose to prevent a stranger to the property from selling competing wares rent-free in front of such property or from otherwise interfering with traffic to, from or in front of such property for his own benefit and profit. There is no requirement, either in the Constitution of the United States or in any sound theory of justice, that any person shall have an absolute right to appropriate to the use of his own private business a part of the street or sidewalk dedicated and prepared at public expense for general public use.

See *Commonwealth* v. *Pascone* (Mass.), April 5, 1941 (1941 Mass. Advance Sheets, 713; 33 N.E. (2d) 522).
Commonwealth v. *Fox*, 218 Mass. 498, 500.
Commonwealth v. *Ellis*, 158 Mass. 555, 556.

II. THE APPLICATION OF THE STATUTE TO THIS PETITIONER IS NOT RENDERED UNCONSTITUTIONAL MERELY BECAUSE THE COMMODITY WHICH HE WAS SELLING ON THE STREETS OF BOSTON WAS A PAMPHLET ADVOCATING CERTAIN RELIGIOUS DOCTRINES OR THEORIES.

While the First and Fourteenth Amendments to the Constitution of the United States guarantee an absolute right of freedom of religious beliefs, there is no such absolute right of freedom to act in accordance with one's religious beliefs. The pamphlets displayed and sold by the petitioner on the streets of Boston were a form of "merchandise", whatever their contents. The petitioner's actions in connection therewith brought him clearly within the scope of the general prohibitions of the statute, which was not rendered inapplicable to his conduct by reason of his religious beliefs.

This underlying principle has often been recognized by this Honorable Court.

Cox v. *New Hampshire*, March 31, 1941 (61 Sup. Ct. Rep. 762, 765).

Cantwell v. *Connecticut*, 310 U.S. 296, 303.

Minersville School District v. *Gobitis*, 310 U.S. 586, 594.

Reynolds v. *United States*, 98 U.S. 145, 166.

See also *Manchester* v. *Leiby*, 117 F. (2d) 661, 666; cert. denied, April 7, 1941 (61 Sup. Ct. Rep. 838).

The conditions imposed by the Massachusetts statute upon the sale of pamphlets by the petitioner did not in the slightest degree interfere with his right to freedom of religious belief or his right to a free dissemination of his beliefs. The only effect of the statute was to regulate his

attempted commercial use of the public streets of the City of Boston, and this effect did not infringe upon his constitutional rights.

In his brief in support of the petition for certiorari, the petitioner relies chiefly upon the following cases, all of which are readily distinguishable from the case at bar:

Lovell v. *Griffin*, 303 U.S. 444.
Schneider v. *State*, 308 U.S. 147.
Cantwell v. *Connecticut*, 310 U.S. 296.

In the first place, none of the foregoing cases involved statutes or ordinances the operation of which was limited to the regulation of commercial uses of public highways, as is the Massachusetts statute here under consideration.

In *Lovell* v. *Griffin*, *supra*, this Court held unconstitutional a municipal ordinance which prohibited the distribution of literature of any kind, at any time, at any place and in any manner without a permit from the City Manager. This was held to violate the guaranty of freedom of the press. No such prohibitions are contained in the Massachusetts statute, which leaves wholly unregulated all forms and methods of distribution of literature, except distribution involved in sales in the streets of the City of Boston.

In *Schneider* v. *State*, *supra*, the Irvington ordinance forbade canvassing, soliciting, the distribution of circulars or the communication of any views whatever, from door to door, without a permit from the chief of police, who was given extremely broad discretionary powers in determining what literature and ideas might be distributed or disseminated and by what persons they might be distributed or disseminated. The Massachusetts statute contains no such limitations upon the dissemination of ideas or the distribution of literature.

The *Cantwell* case, *supra*, involved a statute forbidding the solicitation of money for religious purposes without the approval of a specified public official. It was applicable to solicitation in homes and in other private places, as well as in public places. This Honorable Court held that the right to make such solicitations could not lawfully be conditioned "upon a license, the grant of which rests in the exercise of a determination by state authority as to what is a religious cause . . ." (310 U.S. 296, 307). The Massachusetts statute here challenged imposes no restriction whatever upon the solicitation of funds for religious purposes, or even upon the sale of religious pamphlets except where such sales are made in the streets of the City of Boston.

Conclusion.

The respondent respectfully submits that the judgment of the Massachusetts court which is challenged by the petitioner was correct, in that the statute which the petitioner was found to have violated imposes reasonable regulations concerning the use of the streets of the City of Boston for commercial purposes, and does not impair or infringe upon any right of the petitioner under the Fourteenth Amendment to the Constitution of the United States. The respondent respectfully urges that the petition for certiorari be denied.

Respectfully submitted,

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Appendix.

MASSACHUSETTS ACTS AND RESOLVES OF 1907, CHAPTER 584.

An Act Relative to the Use of Public Streets in the City of Boston for the Storage and Sale of Merchandise.

SECTION 1. The board of street commissioners of the city of Boston may issue, under the conditions hereinafter provided and under rules of its own not inconsistent herewith, licenses for the use of specified parts of public streets in said city for the storage and sale of merchandise.

SECTION 2. A person seeking such a license shall file with said board a written application therefor, stating his name, age, occupation, residence and place of business, if any, and whether or not he is a citizen of the United States or has declared his intention to become such. He shall describe accurately in writing, by plan or otherwise, the location, the shape and the dimensions of the space which he desires to occupy, the movable structures which he proposes to use, and the kinds of merchandise which he wishes to store and to sell. He shall submit as part of his application the written consent to the issuance of the said license on the part of the owner or owners of the premises in front of which he desires to carry on business and of the tenants of the ground floor of such premises, or in lieu thereof the written consent of the duly authorized agent or agents of such owners and tenants. When the privilege for which a license is asked is to be exercised in front of premises owned by the city of Boston, the owner's consent herein provided for may be given by the department having charge of said premises. An application from a firm or a corporation shall be made by such partners or officers and under such further conditions as the board shall determine, and every partner or officer so designated shall give concerning himself the information as to age, occupation,

citizenship, residence and place of business which is required of an individual applicant.

SECTION 3. The application shall be sent by the board of street commissioners to the police commissioner of the city of Boston, with a request for a report thereon. It shall be the duty of said police commissioner forthwith to examine in person or by means of his subordinates the location for which the license is asked, with particular reference to the effect of its use as desired upon the free passage of vehicles and of foot passengers and upon the maintenance of public order. In his report to the board of street commissioners, which shall be made as soon as practicable, he may certify his approval or his disapproval, or his approval conditional upon amendments to be made in the application as affecting the precise location, its area or the kinds of merchandise to be stored and sold thereon.

SECTION 4. Should the board of street commissioners and the police commissioner agree as to the propriety of issuing a license, the authority for further action shall be vested in said board; but no license shall become effective until twenty-four hours after a copy thereof has been delivered to the police commissioner.

SECTION 5. A license issued by the board of street commissioners may be for one or more week days in each week, for such hours daily as it shall in each case determine, and for any period not exceeding twelve months. It may be renewed on an application conforming to the conditions and in accordance with the procedure prescribed in sections two, three and four of this act. It may be suspended or revoked for any reason which said board shall consider sufficient.

SECTION 6. For each license issued and for each renewal thereof the board of street commissioners shall charge and collect in advance a fee of not less than five dollars nor more than one hundred dollars, according to its estimate of

the value of the privilege granted, the receipt of which fee shall be certified on the face of the license. It may make and collect an additional charge as rent whenever the licensee is not the principal tenant of the ground floor of the premises in front of which the location is granted; or whenever such tenant is the licensee but carries on in the location for which the license is issued a business which in the manner of its conduct or in the character of the merchandise which is sold differs materially from the business in which he is mainly engaged at that place.

Section 7. The board of street commissioners shall cause to be kept at its office full and accurate records of its doings under this act, open to the public under reasonable restrictions, and at all times to the mayor of the city or to such persons as he may designate. Separate accounts shall be kept of moneys received from licenses and from rentals derived from the use of parts of the public streets. Employees of the board entrusted with the receipt or the custody of such moneys shall be required to give bonds for the faithful performance of their duties to such amount in each case and of such character as the board shall determine. Moneys received under the provisions of this act shall be paid over to the city collector weekly, or more frequently, with a statement in detail of the sources from which they were derived; and the collector shall give his receipt therefor. The board shall include in its annual report a reasonable summary of its doings under the authority of this act.

Section 8. Requirements and prohibitions contained in this act or elsewhere to the contrary notwithstanding, it shall be lawful to occupy without license or fee places in the streets, not including sidewalks, within the limits of Faneuil Hall Market, as the same are or may be defined in the ordinances of the city of Boston, and other market limits added under authority of chapter three hundred and

seventy-six of the acts of the year eighteen hundred and ninety-six, for the sale from wagons or other vehicles of fresh provisions and perishable produce: *provided*, that the same are the product of the farm of the person offering them for sale, or of a farm within ten miles of the residence of such person; or are to be sold at wholesale only by the party offering the same for sale on commission, for, or as agent for, some person or persons not residing or having a usual place of business within eight miles of said market; or are meats to be sold at wholesale only by the person who slaughtered the animals of which the same were a part. Such sales shall be lawful only on days on which Faneuil Hall Market is open. Nothing contained in this section shall be construed to repeal or prevent reasonable rules of police, needful for the decorum, convenience and good order of the market, and of those who buy and sell therein.

SECTION 9. The police commissioner of the city of Boston may designate from time to time certain streets, or parts of streets, or sections of the city wherein, and not elsewhere in the city, it shall be lawful on the days and within the hours specified by him, and under such general rules as he shall make, for any hawker or pedler, without the license provided for in this act, to stop or stand for the purpose of selling merchandise: *provided*, that such hawkers or pedlers carry on their business in conformity with the laws of the Commonwealth, the ordinances of the city, and the regulations of the board of aldermen and of the board of health of the city of Boston, now or hereafter enacted and not inconsistent herewith.

[SECTION 10. A person who uses or occupies a part of a public street in the city of Boston, otherwise than according to the provisions of this act, for the purchase, sale, storage or display of merchandise or other articles except

materials or appliances used or to be used for public purposes or for building operations under authority or license lawfully conferred or issued by or under an ordinance of the city of Boston, now in existence or hereafter enacted, shall be subject to a fine not exceeding twenty dollars for the first offence and not exceeding one hundred dollars for each subsequent offence, and should such person be unknown to the police officer witnessing such use or occupation he may be arrested by the officer without a warrant.]*

SECTION 11. Chapter two hundred and eleven of the acts of the year eighteen hundred and fifty-nine, chapter one hundred and fifty-two of the acts of the year eighteen hundred and sixty, and all other acts, ordinances and regulations inconsistent herewith are hereby repealed and annulled.

*This section was substituted for the original section 10 by Massachusetts Acts and Resolves, 1909, chapter 329.